



# **COMMONWEALTH of VIRGINIA**

Matthew J. Strickler  
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY  
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David K. Paylor  
Director

Robert J. Weld  
Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ARKAY PACKAGING CORPORATION FOR THE BOTETOURT COUNTY, VA FACILITY Registration No. 21274**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Arkay Packaging Corporation, regarding its facility in Botetourt County, Virginia, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, applicable regulations and its permit.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Arkay" means Arkay Packaging Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Arkay is a "person" within the meaning of Va. Code § 10.1-1300.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Facility” means the Arkay Packaging Corporation manufacturing facility, located at 350 Eastpark Drive, Botetourt County, Virginia.
7. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
9. “Permit” means the Stationary Source Permit to Construct and Operate issued to Arkay on December 14, 2018 under the Virginia Air Pollution Control Law and the Regulations.
10. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
11. “Va. Code” means the Code of Virginia (1950), as amended.
12. “VAC” means the Virginia Administrative Code.
13. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Arkay owns and operates the Facility in Botetourt County, Virginia.
2. Arkay staff contacted Department staff on December 11, 2018 and December 12, 2018. Arkay was inquiring about the issuance of the Permit for new press #420 (Ref. E10).
3. Arkay staff was informed that the Permit was still in draft status and in the public comment period. During those conversations, Arkay staff stated that construction/installation had occurred for the press and that the source was waiting for the Permit to start the press. Department staff explained that Air Pollution Control Law and Regulations prohibit construction of equipment that requires an air permit, until the source receives the final state operating permit.
4. Arkay provided an email stating that the date construction started on the new press was September 3, 2018.

5. 9 VAC 5-80-1120 A states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.
6. On January 9, 2019, the Department issued NOV ABRRO001071 to Arkay for the violation listed in paragraphs, C(3) and C(4), above.
7. On January 15, 2019, Arkay responded to the NOV and a meeting was held on February 6, 2019 to discuss the NOV.
8. Based on information received by the Department on December 11, 2018 and December 12, 2018, the Board concludes that Arkay violated 9 VAC 5-80-1120 A as described in paragraph C(3) and C(4), above.
9. The Permit was issued on December 14, 2018 and that resolves the violation described in paragraph C(3) and C(4), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Arkay, and Arkay agrees to pay a civil charge of **\$7,106.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Arkay shall include its Federal Employer Identification Number (FEIN) 13-1971149 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Arkay shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Arkay for good cause shown by Arkay, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Arkay admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Arkay consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Arkay declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Arkay to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Arkay shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Arkay shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Arkay shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Arkay.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Arkay has completed all of the requirements of the Order;
  - b. Arkay petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Arkay.

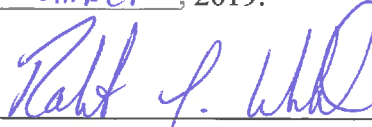
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Arkay from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Arkay and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Arkay certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Arkay to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Arkay.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

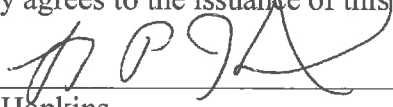
15. By its signature below, Arkay voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13<sup>th</sup> day of November, 2019.



Robert J. Weld, Regional Director  
Department of Environmental Quality

Arkay Packaging Corporation voluntarily agrees to the issuance of this Order.

Date: 11/8/2019 By:   
Mr. Brian Hopkins  
Vice President of Operations  
Arkay Packaging Corporation

State of New York  
City/County of Suffolk

The foregoing document was signed and acknowledged before me this 8<sup>th</sup> day of November 2019, by Mr. Brian Hopkins who is the Vice President of Operations for Arkay Packaging Corporation, on behalf of the corporation.

  
Notary Public

01BR6089412  
Registration No.

My commission expires: September 22<sup>nd</sup> 2023  
Notary seal:

JACQUELINE V. BROWNE  
Notary Public, State of New York  
No. 01BR6089412  
Qualified in Suffolk County  
Commission Expires, Sep. 22, 2023